



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

**1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733**

NOV - 3 2008

**NOTICE OF DECISION NOT TO USE SPECIAL NOTICE PROCEDURES
URGENT LEGAL MATTER
CERTIFIED MAIL NUMBER:
RETURN RECEIPT REQUESTED**

F&H Investments, LLC
2301 West Carolina Way
Roswell, NM 88201

**Re: McGaffey and Main Ground Water Plume Superfund Site, Roswell, NM; Site ID
No. LW; CERCLIS No. 000006053686; F&H Investments, LLC; Waiver of Special
Notice**

Dear Sir/Madam:

The purpose of this letter is to notify F&H Investments, LLC, (hereinafter F&H, you or your) that the United States Environmental Protection Agency (EPA) has determined not to use special notice procedures pursuant to Section 122 (e) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended (CERCLA), 42 U.S.C. § 9622(e), at the McGaffey and Main Ground Water Plume Superfund Site (Site) located in Roswell, Chaves County, New Mexico regarding the Remedial Design and Remedial Action (RD/RA) with respect to F&H. EPA has information indicating that F&H may be liable to EPA for the costs of its response action, under CERCLA Section 107(a), 42 U.S.C. § 9607(a), as an owner of a facility within the meaning of CERCLA Section 107(a)(1), 42 U.S.C. § 9607(a)(1).

I. DECISION NOT TO USE SPECIAL NOTICE

In this instance EPA has decided that it is inappropriate to invoke the Section 122(e) special notice procedures. EPA believes that using such special notice procedures would not facilitate an agreement between EPA and F&H, and would not expedite the response action at the Site because we have determined that F&H lacks the resources to conduct response activities.

II. ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), 42 U.S.C. § 9613(k), EPA must establish an administrative record that contains documents that form the basis of EPA's decision regarding the selection of a response action for a site. The administrative record file, which contains the documents related to the response action selected for the Site, is available to the public for inspection and comment. The primary location of the administrative record file is the Superfund Division file room at the EPA Region 6 office located at:

U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733

To make arrangements to see the administrative record file for the Site, at the Region 6 office, please contact the Remedial Project Manager for the Site:

Mr. Michael Torres (6SF-RL)
Superfund Division
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733
Phone: (214) 665-2108
Fax: (214) 665-6660
torres.michael@epa.gov

The administrative record file is also available for viewing and copying at:

Roswell Public Library
301 N. Pennsylvania Ave.
Roswell, NM 88201-4695 (505) 622-7101

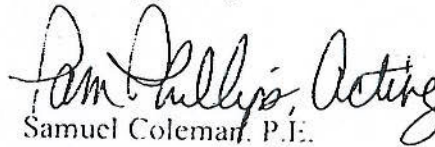
III. RESERVATION OF RIGHTS

The EPA's rationale for making the determinations contained in this letter is based on the evidence in the EPA's files. However, please be aware that these determinations are subject to the discovery, albeit unlikely, of information that may come into the EPA's possession that would cause it to reverse its determinations. Furthermore, these determinations neither constitute, nor should they be construed as, a covenant not to sue or a waiver of prosecutorial discretion concerning this matter. In addition, nothing in this correspondence is intended to waive any rights the United States may have at law or in equity concerning the McGaffey and Main Ground Water Plume Site against any parties associated with that Site, including without limitation F&I Investments, LLC.

IV. EPA CONTACT

Thank you for your attention to this matter. If you have any questions, please direct them to EPA Senior Attorney Mr. James E. Costello at (214) 665-8045.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Sam Coleman, Acting".

Samuel Coleman, P.E.

Director

Superfund Division

cc: Mr. Richard L. Alvidrez
Keleher & McLeod